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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202340
Party	Defendant Harry N. Abrams, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOHN F. WHELAN d/b/a APPLESEED  
PRESS BOOK PUBLISHERS,

Opposer,

v.

HARRY N. ABRAMS, INC.,

Applicant.

Opposition No. 91202340

**APPLICANT'S OPPOSITION TO  
OPPOSER'S MOTION FOR ENLARGEMENT OF TIME**

Opposer's motion to extend the discovery deadline by 60 days should be denied because Opposer has not made the minimum showing necessary to establish good cause to support an extension of the discovery period for any length of time.

Pursuant to Fed. R. Civ. P. 6(b), an extension of time may be granted only upon a demonstration of good cause. Opposer bears the burden of persuading the Board that it has been diligent in meeting its responsibilities and should therefore be awarded additional time. Nat'l Football League, NFL Properties LLC v. DNH Mgmt., LLC, 85 U.S.P.Q.2d 1852, 1854 (T.T.A.B. 2008).

In order to demonstrate good cause, Opposer is required to "state with particularity the grounds therefor, including detailed facts constituting good cause." SFW Licensing Corp. & Shoppers Food Warehouse Corp. v. Di Pardo Packing Ltd., 60 U.S.P.Q.2d 1372, 1375 (T.T.A.B. 2001); Luemme Inc. v. D.B. Plus Inc., 53 U.S.P.Q.2d 1758, 1760-61 (T.T.A.B. 1999); see also Trademark Rule 2.127(a) (requiring that every motion contain full statement of grounds). The Board "will scrutinize carefully" any motion for an extension of time to determine whether good

cause has been shown, including the diligence of the moving party during the discovery period. Luemme, 53 U.S.P.Q.2d at 1761 (T.T.A.B. 1999).

It is well settled that “[m]ere delay in initiating discovery does not constitute good cause for an extension of the discovery period.” Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303, 1305 (TTAB 1987). Where “a party does not serve written discovery requests until the final day of discovery and [does] not attempt to depose its adversary during the prescribed discovery period, a motion to extend discovery will ordinarily be denied.” Nat’l Football League, 85 U.S.P.Q.2d at 1854.

Since discovery opened on January 9, 2012, Opposer has failed to conduct discovery in a timely fashion and with the diligence necessary to meet the discovery deadlines established by the Board on October 31, 2011. Despite the fact that the discovery period ends on July 7, 2012 and Opposer’s expert disclosures were due on June 7, 2012, Opposer has not made its expert disclosures or retained an expert, and waited until June 5, 2012 to serve notices of depositions and document requests upon Applicant.

Accordingly, in addition to ignoring the deadline for making its expert disclosures, it has waited until the last minute to engage in discovery. Opposer has also substantially delayed in responding to Applicant’s discovery requests, which were served on Opposer months ago.

Further substantiating this opposition, Opposer has not provided any justification whatsoever for its delay in obtaining an expert, or for the need to have additional time to complete discovery by July 7, 2012. The only statement offered in support of Opposer’s request for an extension is that “Opposer is in discussions with several experts but has yet to retain a suitable expert.” This vague and unsupported assertion does not provide any information as to why Opposer has been unable to pick an expert or why it sat idly for months before initiating any

discovery. This deficiency in Opposer's request for an extension warrants the denial of its motion. See Luemme, 53 U.S.P.Q.2d at 1760-61 (denying petitioner's sparse motion to extend consisting of vague assertions related to extensive travel); Fairline Boats plc v. New Howmar Boats Corp., 59 USPQ2d 1479, 1480 (T.T.A.B. 2000) (denying motion for extension and dismissing cancellation proceeding for failure to take testimony or offer other evidence in support of claims).

The one point that Opposer's motion does make clear is that Opposer's need for an extension is entirely of its own doing. Opposer has failed to carry its burden as the party that initiated this opposition, Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc., 61 U.S.P.Q.2d 1542, 1543-44 (T.T.A.B. 2001), and has not provided any cognizable basis for granting its motion for an extension. Because Opposer has failed to sustain its burden in demonstrating good cause, its motion for a 60-day extension should be denied.

Respectfully submitted,

**FLASTER/GREENBERG, P.C.**

Dated: June 20, 2012

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**CERTIFICATE OF SERVICE**

I, Elisa N. Bramble, hereby certify that the forgoing Opposition to Opposer's Motion for Enlargement was served on the following counsel of record for Opposer on this 20<sup>th</sup> day of June, 2012 via regular U.S. mail:

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